

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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PACIFIC CYCLE, INC.,

Plaintiff,

v.

ORDER

12-cv-529-wmc

POWERGROUP INTERNATIONAL, LLC  
(a/k/a POWERGROUP, INTERNATIONAL,  
INC.), TOMBERLIN AUTOMOTIVE GROUP,  
INC., and MICHAEL TOMBERLIN,

Defendants.

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This case is set for trial to the bench on October 28, 2013, to resolve plaintiff Pacific Cycle's claim that defendants Michael Tomberlin and Tomberlin Automotive Group, Inc. are jointly and severally liable to plaintiff for damages arising from defendant PowerGroup's breach of contract with Pacific Cycle. The parties' pretrial submissions reveal that a dispute exists as to whether plaintiff should be limited at trial to pursuing joint and several liability solely under an alter-ego theory, or whether it may also pursue theories of successor and joint venture liability.

Although the parties' arguments up to this point have focused on whether Pacific Cycle adequately pled these latter two theories in its complaint, plaintiff's latest submission on jury instructions also contains a belated request that it be granted leave to amend its complaint in the event the court disagrees about the adequacy of the original pleading. (Dkt. #102, pg. 5-8.) While defendants would typically be entitled to respond to this request for alternative relief, the court's automated filing system does not calendar a response to such a request unless filed as a separate motion. Still, plaintiff's request is not frivolous and is, at least, one approach the court was considering in any event.

Accordingly, defendants may have until October 16, 2013, in which to file a response to plaintiff's request that, in the alternative, it be allowed to amend its complaint. Given the amount of paper already devoted by the parties to this subject, the court respectfully requests

that defendants' reply be reasonably brief and focused on the issues of delay and prejudice, if any, from the addition of what appear to be closely intertwined theories of liability.

Entered this 11th day of October, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge